

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18023 of 2019

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1. Md. Sairul Son of Late Damodar Miyan R/o Village-Kataiya Got Ward no. 13, P.O. Kataiya Mane, P.S.-Pipara, District-Supaul
 2. Ram Prasad Mandal Son of Late Babua Mandal R/o Village-Jhakarahi Ward No. 27, Supaul, Police Station-Supaul, District-Supaul
 3. Gajendra Thakur Son of Late Surya Narayan Thakur R/o Village-Chakala Nirmali, P.O. and Police Station and District-Supaul
 4. Vivekanand Jha Son of Late Bhuneshwar Jha R/o Muradpur, P.O. Muradpur, P.S. Nauhata, District Sahara
 5. Bishnudeo Sah Son of Late Baldeo Sah R/o Village-Chak Dumariya, P.S. Karnpur, District-Supaul
 6. Md. Ahashan Son of Late Gulam Rasul R/o Mathni Puaranwar, P.O. Shukpur, District-Supaul
 7. Kapleshwar Sah Son of Late Jagdish Sah R/o Village-Maricha, P.O. Kharal, Police Station and District-Supaul

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of General Administration earlier known Personal Administrative Reforms, Govt. of Bihar, Patna
2. The Deputy Secretary Department of General Administration earlier known Personal Administrative Reforms, Govt. of Bihar, Patna
3. The District Magistrate Supaul
4. The Deputy Collector Establishment, District-Supaul
5. The Chief Engineer Water Resources Department, Birpur, District-Supaul
6. The Superintending Engineer Irrigation Division, Water Resources Department, Saharsa
7. The Executive Engineer Irrigation Division, Water Resources Department, Saharsa
8. Assistant Engineer Irrigation Division, Water Resources Department, Saharsa

... .. Respondents

with

Civil Writ Jurisdiction Case No. 18539 of 2019

1. Vijay Prasad Son of Late Nathuni Sah Resident of Village and Post Office Mokal, Police Station-Agarer, District-Rohtas at Sasaram
2. Jay Kunth Singh alias Ram Prasad Singh Son of Late Rameshwar Singh Resident of Village Semari, Post Office Sikariya, Police Station Sheosagar, District-Rohtas at Sasaram
3. Nesar Ansari Son of Unis Ansari Resident of Village Semari, Post Office Sikariya, Police Station Sheosagar, District-Rohtas at Sasaram



4. Lal Babu Dhobi Son of Late Jagmohan Baitha Resident of Village Semari, Post Office Sikariyan, Police Station Sheosagar, District-Rohtas at Sasaram
5. Ram Ayodhya Sharma Son of Late Ramadhare Sharma R/o Village-Gansadih, Post Office-Jaipur, Police Station-Sasaram, District-Rohtas at Sasaram
6. Dinanath Singh Son of Late Chandradeo Singh R/o Village-Semaradih, Post Office-Chandi, Police Station-Akothi Gola, District-Rohtas at Sasaram
7. Awadhesh Prasad Son of Sipahi Sah R/o Village Pakariya Tola Mahadeo Ganj, Post Office and Police Station Akorhi Goal, District-Rohtas at Sasaram
8. Dinanath Prasad Son of Sipahi Sah R/o Village Pakariya Tola Mlahadeo Ganj Post Office and Police Station Akolrhigola District-Rohtas at Sasaram
9. Anil Kumar Singh Son of Sheopujan Singh Resident of village Basantpur, Post Office Chap Police Station Akorhi Gola, District Rohtas at Sasaram.
10. Bonod Kumar Singh Son of Gopal Singh Resident of village Chapragarph, Post Office and Police Station Akorhi Gola, District Rohtas at Sasaram.
11. Anup Kumar Singh Son of Dudh Mohan Singh Resident of village Semradih Post Office Chandi Police Station Akorhi Gola, District Rohtas at Sasaram.
12. Baban Singh Son of Somaru Singh Resident of village Mahuari Post Office Chap Police Station Akorhi Gola, District Rohtas at Sasaram.
13. Ram Bachan Singh Son of Somari Singh Resident of village Mahuari Post Office Chap Police Station Akorhi Gola, District Rohtas at Sasaram.
14. Sunil Singh Son of Babab Singh Resident of village Barari Post Office and Police Station Akorhi Gola, District Rohtas at Sasaram.
15. Thakur Prasad Son of Ram Sundar Prajapati Resident of village Pakariya Post office and Police Station Akorhi Gola, District Rohtas at Sasaram.
16. Kamendra Prasad Gupta Son of Ramgovind Gupta Resident of village and Post Office Chandi Police Station Akorhi Gola, District Rohtas at Sasaram.
17. Surendra Singh Son of Bikrama Singh Resident of village Gaighat, Post Office Karbandia, Police Station Sadaram District Rohtas at Sasaram.
18. Raju Prasad Son of Ram Narayan Prasad Resident of village and Post Office Odar Police Station Sonhan District Kaimur at Bhabua.
19. Ramesh Singh Son of Hazari Singh Resident of village Pasiyadih Post Office Jaipur Police Station Sasaram District Rohtas at Sasaram.
20. Rameshwar Sah Son of Mathura Sah Resident of village Gansadih Post Office jaipur Police Station Sasaram, District Rohtas at Sasaram.
21. Ram Hridaya Singh Son of Late Guput Singh Resident of village Gansadih Post Office Jaipur Police Station Akori District Rohtas at Sasaram.
22. Ramji Yadav Son of Late Gukha Yadav 1 Resident of village Gansadih Post Office Jaipur Police Station Sasaram District Rohtas at Sasaram.
23. Manoj Sharma Son of Late Ram Adhar Sharma, 1 Resident of village Gansadih Post Office Jaipur Police Station Sasaram District Rohtas at Sasaram.
24. Jawahir Sharma Son of Haridwar Sharma Resident of village Turkwalia,



Post Office Asarhi, Police Station Rajpur District Rohtas at Sasaram.

25. Vijai Singh Son of Ganesh Singh Resident of village Sasana Post Office Mahuaon Police Station Badem. District Aurangabad.
26. Dharmendra Sharma Son of Ayodhya Sharma Resident of village Gansadih Post Office Jaipur Police Station Sasaram District Rohtas at Sasaram.
27. Shesh Narayan Singh Son of Ayodhya Singh Resident of village Nawada Ben Post Office Nawada, District Muzaffarpur.
28. Rajesh Sah Son of Kedar Sah Resident of village Amarhi, Post Office Amarhi, Police Station Jaipur District Rohtas at Sasaram.
29. Vijai Kumar Son of Loha Sharma Resident of village and Post Office Mouna, Police Station Rajpur District Rohtas at Sasaram.
30. Ramkeshwar Sah Son of Vishwanath Sah Resident of village Khairahi, Post Office Panchpokhari, Police Station and District Rohtas at Sasaram.
31. Dhanjee Sharma Son of Ramnath Sharma Resident of village Khairahi Post Office Panchpokhari, Police Station Nokha District Rohtas at Sasaram.
32. Upendra Prasad Son of Ram Naresh Sah Resident of village Khairhi Post Office Panchpokhari, Police Station Nokha, District Rohtas at Sasaram.
33. Murari Sharma Son of Ramji Sharma Resident of village Panchpokhari, Post Office Panchpokhari, Police Station Nokha, District Rohtas at Sasaram.
34. Dharmdeo Yadav Son of Lalji Yadav Resident of village Doiyan Post Office Mamrejpur Police Station Chenari District Rohtas at Sasaram.
35. Kuber Prajapati Son of Sadhu Prajapati Resident of village Tetari Post Office Mamrejpur Police Station Chenari District Rohtas at Sasaram.
36. Raj Aram Sharma Son of Rambriksh Sharma Resident of village Doiyan, Post office Mamrejpur Police Station Chenari, District Rohtas at Sasaram.
37. Ayodhya Sharma Son of Late Mahangu Sharma Resident of village Doiyan, Post Office Mamrejpur Police Station Chenari, District Rohtas at Sasaram.
38. Doma Sah Son of Shri Krishna Sah Resident of village Tetari Post Office Mamrejpur, Police Station chenari, District Rohtas at Sasaram.
39. Ishwar Sharma Son of Ganga Dayal Sharma Resident of village Doiyan, Post Office Mamrejpur Police Station Chenari, District Rohtas at Sasaram.
40. Vijai Singh Son of Late Nathuni Singh Resident of village Doiyan, Post Office Mamrejpur Police Station Chenari, District Rohtas at Sasaram.
41. Sugreev Singh Son of Kailash Singh Resident of village Mohania, Post Office Mohania Police Station Mohania, District Kaimur at Bhabua.
42. Manoj Kumar Yadav Son of Kapil Yadav, Resident of village Tetari Post Office Mamrejpur, Police Station Chenari, District Rohtas at Sasaram.
43. Kameshwar singh Son of Late Ramnandan Singh Resident of Village Orain, P.O. Ugahani Police Station Chenari, District Rohtas at Sasaram
44. Ramakant Yadav Son of Bechan Singh R/o Village Tetari, Post Office Mamrejpur, Police Station Chenari, District Rohtas at Sasaram
45. Om Prakash Singh Son of Ram Kripal Singh R/o Village and Post Office Ghosiya Kala, Police Station Bikramganj, District Rohtas at Sasaram



46. Ritesh Kumar Son of Late Harishchandra Choudhary R/o Village Ghosiya Khurd and Post Office Ghisiya, Police Station Bikramganj, District Rohtas at Sasaram
47. Tej Narain Paswan Son of Jagdish Paswan R/o Village Uday Dihari, Post Office Kajhai, Police Station Bikramganj, District Rohtas at Sasaram
48. Vishwa Mohan Singh Son of Late Om Prakash Choudhary R/o Village Ghosiya Khurd, Post Office Ghisiyan, Police Station Bikramganj, District Rohtas, Sasaram
49. Samser Khan Son of Mustaque KHan R/o Village and Post Office Ghoria Kala, Police Station Bikramganj, District Rohtas at Sasaram
50. Nanhaku Singh Son of Ramjit Singh R/o Village and Post Office Bishunpur, Police Station Baghaila, District Rohtas at Sasaram
51. Sanjeet Kumar Son of Kamal Kishore Choudhary R/o Village Ghasiyan Khurd, Post Office Ghisiyan, Police Station Bikramganj, District Rohtas at Sasaram
52. Parash Ram Son of Begu Chand Ram R/o Village Ghosiya Khurd, Post Office Ghosiya Kalan, Police Station Bikramganj, District Rohtas at Sasaram
53. Kamlesh Singh Son of Kedar Nath Singh R/o Village Mathurapur, Post Office Masona, Police Station Sanjhauli, District Rohtas at Sasaram
54. Aij Khan Son of Shigaruddin Khan R/o Ward No. 12, Islam Nagar, village and Post office Ghosiyan, Police Station Bikramganj, District Rohtas at Sasaram
55. Md. Tafssir Ahmad Son of Shahbbir Ahmad R/o Village and Post Office Ghusiyan Kalan, Police Station Bikramganj, District Rohtas at Sasaram
56. Sheikh Khurshid Alam Son of Sheikh Jaiyoddin Alam R/o Village and Post Office Babhnaul, Police Station Dawath, District Rohtas at Sasaram
57. Raju Prasad Son of Jokhan Prasad R/o Village Hunrari, Post Office Nauhaztta, Police Station Belaon, District Kaimur at Bhabhua
58. Sudarshan Prasad Son of Late Bageshwar Prasad R/o Village Semra, Post Office and Police Station Sonhan, District Kaimur at Bhabhua
59. Mithai Dhobi Son of Late Dudhnath Dhobi R/o Village Sonabo, Post Office Parwatpur, Police Station Chainpur, District Kaimur at Bhabhua
60. Nagina Dhobi Son of late Dudhnath Dhobi R/o Village Sonabo, Post Office Parwatpur, District Kaimur at Bhabhua
61. Ramchandar Chandrabanshi Son of Late Premhand Chandrabanshi R/o Village Belaon, Post Office Khairanda, Police Station Belaon, District Kaimur at Bhabhua
62. Om Prakash Ram Son of Late Sitaram Ram R/o Village and Post Office Mahuari, Police Station Karahar, District Rohtas at Sasaram
63. Siyaram Pal Son of Sshri Ramji Pal R/o Village Bharandua, Post Office and Police Station Chenari, District Rohtas at Sasaram
64. Upendra Kumar Son of Kamla Ram R/o Village Bhaarduan, Post Office and Police Station Chenari, District Rohtas at Sasaram



65. Satyendra Prasad Singh Son of Late Ramjee Singh R/o Village Phuli, Post Office Pipara, Police Station Kudara, District Kaimur at Bhabhua
66. Sidhnath Gosai Son of Late Nadeshwar Gosai R/o Village Bharndua, Post Office and Police Station Chenari, District Rohtas at Sasaram
67. Birbal Pandit Son of Bhagelu Ram R/o Village Bharandua, Post Office and Police Station Chenari, District Rohtas at Sasaram
68. Radheshyam Pal Son of Late Samundrapal R/o Village Urda, Police Station Chenari, District Rohtas at Sasaram
69. Sudama Singh Son of Lochan Singh R/o Village Lohara, Post Office Pazrwatpur, Police Station Chainpur, District Kaimur at Bhabhua
70. Raj Kesh Singh Son of Dina Singh R/o Village Majhui o Parwatpur Police Station Chainpur, District Kaimur at Bhabhua
71. Mahendra Kumar Gupta Son of Late Kedar Prasad R/o Village Bharandua Pal, Mohalla, Post Office and Police Station Chenari, District Rohtas at Sasaram
72. Lakshuman Praasad Gupta Son of Late Rambachan Sah R/o Village Amaon, Post Office Amaon, Waraon, Police Station Karamchat Sabbaar, District Kaimur at Bhabhua
73. Bikrama Set Son of Late Shri Narain Seth R/o Village Bharandua, Post Office and Police Station chenari, District Rohtas at Sasaram
74. Gita Devi Widow of Late Sudama Mali R/o Village Telari, Post Office Telari, Police Station Chenari, District Rohtas at Sasaram
75. Ramautar Sah Son of Late Daroga Sah R/o Village Sibani, Post Office Dhanoj, Police Station Kargahar, District Rohtas at Sasaram
76. Ramswarath Singh Son of Lalmohar Singh R/o Village Oiyan, Post Office Gugahni, Police Station Chenari, District Rohtas at Sasaram
77. Mahendra Singh Son of Ramswarath Singh R/o Village Karma, Post Office Ugahani, Police Station Chenari, District Rohtas at Sasaram
78. Upendra Kumar Singh Son of Ramswarath Singh R/o Village Karma, Post Office Ugahani, Police Station Chenari, District Rohtas at Sasaram
79. Kashinath Prasad Son of Ramprit Kahar R/o Village Karma, Post Office Ugahani, Police Station Chenari, District Rohtas at Sasaram
80. Shashikant Son of Lokrik Singh supplementary resident of Village Bajitpur, Post Office and Police Station Sanjhauli, District Rohtas at Sasaram
81. Anirudh Kumar Bhagat Son of Bhola Bhagat R/o Village and Post Office Bank, Police Station Akorhigola ddras
82. Haridwar Singh Son of Muneshar Singh R/o Village and Post Office Bank, Police Station Akorhi Gola, District Rohtas at Sasaram
83. Md. Murtaja Ansari Son of Md. Muslim R/o Village P.W.D. Colony, Anikat Road, Dihari, District Rohtas at Sasaram
84. Guddu Kumar son of Late Banarsi Ram Ward No. 34, Resident of Village and Post Office Dihari on Sone, Police Station Dihari On Sone, District Rohtas at Sasaram



... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Environment and Forest Department, Government of Bihar, Patna
2. The Principal Secretary Environment and Forest Department, Government of Bihar, Patna
3. The Joint Secretary Environment and Forest Department, Government of Bihar, Patna
4. The Deputy Secretary Environment and Forest Department, Government of Bihar, Patna
5. The Principal Chief Conservator of Forest Environment and Forest Department, Government of Bihar, Patna
6. The Regional Chief Conservator of Forest Environment and Forest Department, Government of Bihar, Patna
7. The District Magistrate Kaimur at Bhabhua
8. The District Magistrate Rohtas at Sasaram
9. The District Forest Officer Rohtas Forest Division, Sasaram
10. The District Forest Officer Kaimur at Bhabhua

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 18023 of 2019)

For the Petitioners : Mr.Jitendra Kumar Roy, Advocate

For the Respondents : Mr.Md. N.H. Khan, SC-1
Mr.Fazle Karim, AC to SC-1

(In Civil Writ Jurisdiction Case No. 18539 of 2019)

For the Petitioners : Mr.Ravindra Nath Dubey, Advocate

For the Respondents : Mr.Anant Prasad Singh, SC-15

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 14-10-2019

More than four decades ago, the Supreme Court, in case of *B. Nagrajan vs. State of Karnataka*, reported in (1979) 4 SCC 507, in clear terms, decided the distinction between irregular and illegal appointments. This has been consistent judicial approach that something, which is illegal, cannot be regularized or validated in the matter of public employment, though an irregularity can be



regularized. Since, in both the writ applications, common question has arisen, as to whether this Court, exercising writ jurisdiction under Article 226 of the Constitution of India, may direct regularization of services of the petitioners on the ground that they had worked as daily-wage employees under the Departments of the State Government for a long period of time, they have been heard together and are being disposed of by present common judgment and order.

2. Facts of the two cases need to be briefly taken note of before addressing the relief, which the petitioners are seeking, in the background of various judicial pronouncements.

3. There are seven petitioners in C.W.J.C. No. 18023 of 2019, who claim that they were engaged on daily-wage basis in the office of the Executive Engineer, Irrigation Division, Saharsa, discharging their duties as Gauge Reader and Canal Chowkidar prior to 1990. According to them, there was a policy decision of the State Government, contained in Resolution No. 5940 dated 18.06.1993, which stipulated that such daily-wage employees, who were engaged prior to 01.08.1985, would be given the benefit of regularization. Subsequently, the State Government came out with another resolution, issued by Memo No. 489 dated 10.05.2005, whereby the cut off date was extended from 01.08.1985 to



11.12.1990. By yet another resolution, issued by Memo No.369 on 16.03.2006, the State of Bihar decided to allow the benefit of regularization to all such daily-wagers, who had worked for a minimum period of 240 days prior to 11.12.1990. Claim of the petitioners for regularization is apparently based on the said Resolution dated 16.03.2006, which has been brought on record by way of Annexure-2.

4. It is significant to note that the pleadings do not indicate the specific periods during which the petitioners had worked as daily-wage employees. There is no statement that they ever worked after 1990. They have a grievance that the District Magistrate, Supaul, is not taking a final decision to regularize their services after preparation of a panel of such daily-wage employees, who deserve regularization in terms of the decision of the State Government as contained in Resolution dated 16.03.2006. There is no averment in the writ application that any selection process was ever undertaken in conformity with Articles 14 and 16 of the Constitution of India at the time of their engagement on daily-wage basis prior to 1990.

5. There are 84 petitioners in C.W.J.C. No. 18539 of 2019. It has been stated in paragraph 12 of the writ application that they had been working under Shahabad Forest Division (Rohtas



Forest Division) till 1990 and according to them, the respondents are not not taking required steps for regularization of their services. The petitioners have not brought on record any engagement/appointment letter.

6. On the basis of above stated facts, the petitioners of C.W.J.C. No. 18023 of 2019 are seeking the following relief : -

“That this is an application for issuance of an appropriate writ order or direction to the respondent authorities specially the respondent no.3 to complete the process of regularization of the petitioners who were earlier working on daily wages in the office of respondent no. 6 pursuant to a Govt. policy decision issued under the signature of respondent no.1 vide letter no.639 dated 16.3.2006 and the subsequent direction but inspite of submission of the list prepared by the respondent no.6 dated 6.1.2009 of 48 daily wages employees who worked prior to 11.12.1990 at least 240 days that includes the name of petitioners, but only the meetings are being held and no final decision has been taken as it appears from the meeting held on 10.7.2018 under the Chairmanship of District Magistrate, Supaul, issued vide memo no.9-1 dated 10.7.2018 specially the resolution no.5 that discuss the case of petitioners entering their name in the said resolution but matter was sent back to the respondent no. 5, 6 and 7 for providing the certain information and matter is kept pending and further be pleased to direct the respondents to provide the complete information so that regularization of the petitioners be made in pursuant to govt. policy decision dated 16.3.2006 considering the list of daily wages employee prepared on 6.1.2009 and also find place in resolution no.5 as one time major.”



7. Petitioners of C.W.J.C. No. 18539 of 2019 have sought following relief : -

“That this writ application is being filed for issuance of appropriate writ/writs, order/orders, direction/directions to the respondents to consider the case of the petitioner for appointment on Class IV post as per government policy and further direct the respondents to send the name of the petitioners for preparation of penal for appointment on Class IV post because the petitioners are working on daily-wages from more than 20 years under the respondents but till date the petitioners were neither absorbed in service nor the name of the petitioners are empanelled in the daily-wages list and further for direction to the respondents to consider the petitioners’ case for giving work as per seniority and as per the agreement signed by the respondents and further direct the respondents to pay the wages to the petitioners regularly and also pay the dues of the petitioners like other similarly situated persons and further for any other relief/reliefs as the petitioners are found entitled to in the facts and circumstances of the case.”

8. The right of temporary/daily-wage employees to be regularized in service on the basis of long continuance, legitimate expectation, employment under the State has been elaborately dealt in the Constitution Bench decision of the Supreme Court, in case of *State of Karnataka vs. Uma Devi*(3), reported in (2006) 4 SCC 1. There was another significant question before the Supreme Court in *Uma Devi* (supra) as to whether the Courts would be justified in issuing directions for regularization based on the



features like long spell of service. The Supreme Court, in case of *Uma Devi* (supra), discussed in detail the distinction between irregular and illegal appointment. The Court held that while answering the question as to whether an appointment is regular or illegal, the Court would have to enquire as to whether the appointment process adopted was tainted by the vice of non-adherence to essential prerequisites or was liable to be faulted on account of the lack of a fair process of recruitment. The oft quoted paragraph 53 of the Supreme Court's decision in case of *Uma Devi* (supra) has been dealt and applied in a series of subsequent Supreme Court's decisions and in my view, since the enunciation of law in paragraph 53 of the said decision is of immense significance, the same is being reproduced hereinbelow : -

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* [(1967) 1 SCR 128 : AIR 1967 SC 1071] , *R.N. Nanjundappa* [(1972) 1 SCC 409 : (1972) 2 SCR 799] and *B.N. Nagarajan* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time



measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

9. On the question, whether the Courts should issue a writ of *mandamus* directing the employer State or its instrumentalities to absorb them in permanent service or to allow them to continue, relying on a Constitution Bench decision of Supreme Court in case of *Rai Shivendra Bahadur (Dr.) vs. Governing Body of Nalanda College* (AIR 1962 SC 1210), the Supreme Court held, in case of *Uma Devi* (supra), that the classical position that *mandamus* cannot be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent. The Supreme Court further held that right of employment would stand denuded by preferring those who have got any casual or those who have come through the



backdoor. An obligation is cast on the State under Article 39(a) of the Constitution of India to ensure that all citizens have equal right to adequate means of livelihood. The Apex Court made following significant observations in case of *Uma Devi* (supra) : in paragraph 51 :-

“.... It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.”

10. The distinction between irregular appointment and illegal appointment has been clearly stated by Supreme Court in case of *State of M.P. Vs. Lalit Kumar Verma*, reported in (2007) 1 SCC 575, paragraph 12 of which reads thus :-

“12. The question which, thus, arises for consideration, would be: Is there any distinction between “irregular appointment” and “illegal appointment”? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is “State” within the meaning of Article 12 of the



Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to.”

11. The law laid down in case of *Uma Devi* (supra) that Court's should not issue writs directing regularization unless the employees are in a position to establish their constitutional or legal right and obligation of the employer, 'State' within the meaning of Article 12 of the Constitution of India, to absorb them, has been reiterated by the Supreme Court in case of *Satya Prakash vs. State of Bihar*, reported in (2010) 4 SCC 179, in paragraph 8, which reads thus : -

“8. In *Umadevi* (3) case [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] this Court held that the courts are not expected to issue any direction for absorption/regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees. This Court held that such directions issued could not be said to be inconsistent with the constitutional scheme of public employment. This Court held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. In view of the law laid down by this Court, the directions sought for by the appellants cannot be granted.”



12. If the appointment itself is in breach of rules or in violation of the provisions of the Constitution, such illegality, in my opinion, cannot be regularized. Ratification or regularization is possible of an act, which is within the power and province of the authority but there has been some non-compliance with the procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment, the Supreme Court has observed in case of *R.N. Nanjundappa v. T. Thimmiah*, reported in (1972) 1 SCC 409.

13. The Supreme Court, in case of *M.L.Kesari vs. State of Karnataka*, reported in (2010) 9 SCC 247, explained the decision in case of *Uma Devi* (supra) and held as follows in paragraph 7 thereof :-

7. It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in *Umadevi (3)* [(2006) 4 SCC 1] , if the following conditions are fulfilled:

- (i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.



(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”

14. In subsequent decision in case of *State of Rajasthan vs. Daya Lal*, reported in (2011) 2 SCC 429, the Supreme Court, considering the law laid down in case of *Uma Devi* (supra) and subsequent decisions, laid down in paragraph 12 as ‘well settled principles relating to regularization and parity in pay’, which reads as under : -

“12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme.



While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

- (ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.
- (iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.
- (iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.



- (v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.”

15. A question had arisen before this Court as to whether the decision in case of *M.L.Kesari* (supra) makes any distinction between ‘illegal and irregular appointments’ as enunciated in case of *Uma Devi* (supra), before a Full Bench of this Court on reference in case of *Ram Sevak Yadav vs. State of Bihar*, reported in 2013(1) PLJR 964 (F.B.). After having referred to the decision in case of *M.L.Kesari* (supra), the Full Bench of this Court in case of *Ram Sevak Yadav* (supra) held in paragraph 33 as follows : -

“33. As we read the paragraph, in our humble opinion, and to the best of our appreciation and understanding, a person not appointed against a sanctioned post and not possessing the requisite qualification for the post is not entitled to regularisation even if he has worked for over ten years. But a person possessing the requisite qualifications appointed against a sanctioned post and who has continued over ten years without aid of Court orders is eligible for regularisation even if the appointment was made without the process of open competitive selection. The catena of decisions noticed by us of the Apex Court in no uncertain terms provide that if the appointment was in violation of Article 14 without advertisement and equal opportunity to all eligible for being



considered, the question of regularisation does not arise. Only if some rudimentary compliance even by registration with and calling of names from the employment exchange was followed, could regularisation be considered if it was made against a sanctioned post. Mere appointment against a sanctioned post without furthermore shall not suffice. With all the humility at our command, again in our humble opinion a competitive selection even in such a case is the mandate of the Constitution bench at paragraph 43 extracted above.”

16. The Full Bench has summed up the law in paragraph 43 as follows : -

“43. We therefore sum up our conclusions and answer the reference as follows:-

A) *Uma Devi* (supra) prohibits regularisation of daily wage, casual, ad-hoc and temporary appointments, the period of service being irrelevant;

B) An illegal appointment void ab-initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularised under any circumstances.

C) Irregular appointments can be regularised if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

D) The appointment must not have been an individual favour doled out to the appointee alone and the person must have continued in service for over ten years without intervention of any court orders.”



17. In view of the facts pleaded in the writ application and the law dealing with regularization of irregular and illegal appointments, as noted above, since I am of the considered view that the initial engagement of the petitioners itself cannot be said to have been made in a manner, which can be termed as constitutionally permissible. Further, question of regularization of the petitioners will even otherwise not arise since, according to their own case, they are not working after 1990 and, a *fortiori*, they cannot claim reinstatement and regularization, by way of right in a proceeding under Article 226 of the Constitution of India at this stage.

18. These writ applications are dismissed as meritless for the foregoing reasons.

19. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.10.2019.
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